

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

AQUIFER GUARDIANS IN URBAN)
AREAS,)
Plaintiff,)
vs.) No. SA:08-CV-495
INTCO-DOMINION INVESTMENTS,) San Antonio, Texas
Defendant.) June 25, 2008

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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(June 25, 2008.)

THE COURT: Mr. Murray, do you have an agreed order or what do you have?

MR. MURRAY: Your Honor, I have Mr. Omar Collin, who is here on behalf of the plaintiffs in the case. I don't think there is any dispute about the order that I showed you earlier. We have a copy of it to present to the Court.

THE COURT: Okay. Let me go ahead and call yours, since you are all here. This is 08-Civil-495, Aquifer Guardians in Urban Areas versus Intco Dominion. And appearances, please.

MR. MURRAY: Mark Murray on behalf of the defendants, Your Honor.

MR. COLLIN: Omar Collin on behalf of the AGUA defendant, Your Honor.

THE COURT: All right. So the agreed order is for dismissal?

MR. MURRAY: That is correct, Your Honor. May I present it to the Court?

THE COURT: Yes. Thank you.

Mr. Collin, this order, and I will just read it. Came on for consideration defendant Intco Dominion Partnership's motion to dismiss. Plaintiff Aquifer Guardians in Urban Areas has indicated its agreement to dismiss. The

1 Court is of the opinion the request should be granted. It is
2 therefore ordered that AGUA's claims against Intco are hereby
3 dismissed without prejudice to refiling.

4 Further, plaintiff's application for preliminary
5 injunction is denied as moot and the Court's temporary
6 restraining order is dissolved.

7 Is your client in agreement with this?

8 MR. COLLIN: Yes, Your Honor.

9 THE COURT: Okay. Just -- and I am assuming the
10 basis of this is the failure to give 60 days' notice?

11 MR. COLLIN: Well, Your Honor, we -- first of all,
12 the United States Fish & Wildlife Service yesterday issued an
13 enforcement letter, and we believe that this enforcement
14 letter basically takes the U.S. Department of the Interior --
15 at least they are stepping in to enforce this, so we, at this
16 point, feel that --

17 THE COURT: So the citizen's suit is taking a step
18 back so the government can come in and enforce whatever
19 obligations it thinks necessary?

20 MR. COLLIN: Yes, Your Honor.

21 THE COURT: Okay. That leads me to the second issue
22 that I was going to raise. I don't know what the government
23 is going to do, Fish & Wildlife or the Department of the
24 Interior, and how quickly they may act. Do you have any
25 insight to that?

1 MR. COLLIN: Well, the only insight that we have as
2 of now is what we have, what we can gather from this letter
3 that they issued, which basically discusses, you know, having
4 enforcement agents monitoring the sight and monitoring for any
5 type of violation.

6 THE COURT: Okay. The only reason I am bringing it
7 to you all's attention is, I am heading out for a family
8 vacation come this Saturday, and I will be gone through
9 July 7th. So when the new suit is filed, I am not sure how
10 the clerk's office is going to handle it.

11 I don't know whether they will consider it -- well,
12 they will probably docket it as a new lawsuit, but whether it
13 gets reassigned to me as something that was previously handled
14 or they will randomly reassign to one of the four of us
15 here -- well, Judge Furgeson will be off the rotation, now
16 that he is taking senior status.

17 So what is going to happen, just to give you all a
18 heads up, if a new suit is filed -- is there somebody here
19 from the Fish & Wildlife, by the way?

20 MR. VALDIVIA: No, I am with --

21 THE COURT: Okay. If a new suit is filed, it will
22 either get reassigned to me as a continuing matter or it will
23 go to one of the three judges here, Judge Garcia, Judge Biery
24 or myself, random assignment.

25 If it gets assigned to one of the other two, fine.

1 I am not going to interfere with the clerk's assignment
2 process. The only thing I am telling you is, if it gets
3 reassigned to me, though, and somebody is seeking any kind of
4 immediate injunctive relief, I am not going to be around until
5 July, what, 7th or 8th, that Monday.

6 So if it gets reassigned to me and somebody is going
7 to be seeking injunctive relief, you will need to work with my
8 office to get another judge to handle any emergency injunctive
9 relief that may be necessary, so just to give you a heads up
10 of what is happening on my schedule.

11 Does anybody have any questions, comments?

12 MR. MURRAY: If I may, Your Honor.

13 THE COURT: Yes.

14 MR. MURRAY: I don't want to get -- I hate to get
15 into the merits of this too much, but I don't think there
16 would be any dispute on either side that insofar as it
17 concerns the warbler, their nesting dates will have long
18 past -- frankly, have past now and will long have past by the
19 time you are gone.

20 I am leaving myself on Sunday and I will be gone.
21 But insofar as the warbler is concerned, I don't think there
22 will be any implications there, because they will be gone.
23 There is no clearing going on nor contemplated to be going on
24 on this property for a long time, I mean, way -- until way
25 after you are back from vacation, for sure. And the only

1 thing that is going on is construction of the road, but there
2 is no clearing going on, so I can't imagine that such an
3 emergency would arise in your absence.

4 THE COURT: Well, I am just bringing it to
5 everybody's attention that, you know, you might have to hunt
6 for another judge if it gets reassigned to me.

7 Well, good enough. I will sign the order. I urge
8 all parties to try to sit together and talk this out. This
9 ain't going away any time soon.

10 Ms. Dietrich, if you will get this filed.

11 COURTROOM DEPUTY: Yes, sir.

12 THE COURT: That is dismissed. The TRO is
13 dissolved. And otherwise, we are adjourned.

14 MR. COLLIN: Thank you, Your Honor.

15 MR. MURRAY: Thank you, Your Honor.

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UNITED STATES DISTRICT COURT)

WESTERN DISTRICT OF TEXAS)

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

I further certify that the transcript fees format comply with
those prescribed by the Court and the Judicial Conference of
the United States.

Date signed: June 27, 2008.

/s/ Karl H. Myers

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